

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DENNIS HAYNES, individually

Plaintiff,

v.

Case No: 2:17-cv-223-FtM-99CM

PERKINS & MARIE
CALLENDER'S LLC,

Defendant.

ORDER

This matter comes before the Court upon review of Plaintiff's Motion to Vacate Clerk's Default (Doc. 12) filed on June 13, 2017. On June 1, 2017, Plaintiff filed a Motion for Clerk's Entry of Default, seeking entry of Clerk's default against Defendant. Doc. 9. On June 2, 2017, the Court granted the motion and directed the Clerk to enter a default against Defendant. Doc. 10. Accordingly, the Clerk entered a default against Defendant on June 2, 2017. Doc. 11. Plaintiff seeks to set aside the Clerk's Entry of Default (Doc. 11) because when he filed the motion for Clerk's default, Plaintiff's counsel was unaware that his co-counsel and Defendant's counsel agreed on extending Defendant's time to respond to the Complaint (Doc. 1). Doc. 12 at 1. On June 13, 2017, Plaintiff filed a Notice of Settlement that this lawsuit has been settled. Doc. 13.

Pursuant to Rule 55(c) of the Federal Rules of Civil Procedure, the Court "may set aside an entry of default for good cause." Fed. R. Civ. P. 55(c). Not susceptible to a precise definition or formula, the Eleventh Circuit has labeled "good cause" as a

“liberal” and “mutable” standard, and one that varies from situation to situation. *See Perez v. Wells Fargo N.A.*, 774 F.3d 1329, 1337 n.7 (11th Cir. 2014); *Compania Interamericana Exp.-Imp., S.A. v. Compania Dominicana de Aviacion*, 88 F.3d 948, 951 (11th Cir. 1996). Here, the Court finds that Plaintiff has shown good cause to set aside the Clerk’s Entry of Default. Doc. 12. Plaintiff’s counsel allege that he moved for entry of Clerk’s default based on his unawareness of ongoing discussions between his co-counsel and Defendant’s counsel, and the parties amicably have resolved this lawsuit. Docs. 12, 13. As a result, the Court will grant the present motion.

ACCORDINGLY, it is hereby

ORDERED:

1. Plaintiff’s Motion to Vacate Clerk’s Default (Doc. 12) is **GRANTED**.
2. Clerk’s Entry of Default (Doc. 11) entered on June 2, 2017 is hereby **VACATED** and **SET ASIDE**.

DONE and **ORDERED** in Fort Myers, Florida on this 14th day of June, 2017.


CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record